

Internal Revenue Service

Number: **200809012**
Release Date: 2/29/2008
Index Number: 985.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:INTL:B05
PLR-133351-07

Date:
November 28, 2007

Taxpayer =
Fund 1 =
Fund 2 =
Fund 3 =
Fund 4 =

Dear :

This is in response to your letter dated July 18, 2007, in which you request a ruling under Treas. Reg. §1.985-1(b)(1)(iii) that Fund 1, Fund 2, Fund 3, and Fund 4 may use a functional currency other than the United States dollar. Specifically, you request a ruling that permits each of Fund 1, Fund 2, Fund 3, and Fund 4 to determine its respective functional currency by applying the principles used to determine the functional currency of a qualified business unit that is not required to use the dollar as its functional currency as provided in Treas. Reg. §1.985-1(c).

The ruling contained in this letter is predicated upon facts and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of factual information, representations and other data may be required as part of the audit process. Taxpayer has represented the facts described below.

FACTS:

Taxpayer is a Delaware statutory trust that is a registered open-end series investment company under the Investment Company Act of 1940. Taxpayer intends to create the following four funds: Fund 1, Fund 2, Fund 3, and Fund 4. Each Fund intends to qualify as a regulated investment company under section 851(a) of the Code, and if so qualified, will be treated as a separate corporation under section 851(g).

Each Fund will operate as an exchange-traded fund. Each Fund intends to invest substantially all of its assets in liquid investment grade money market securities denominated in its named, non-U.S. dollar currency ("designated currency"). The designated currency of Fund 1 will be the euro, the designated currency of Fund 2 will be the pound, the designated currency of Fund 3 will be the yen, and the designated currency of Fund 4 will be the Australian dollar. Each Fund expects to maintain a stable net asset value in its designated currency by investing substantially all of its assets in high quality, short-term instruments denominated in the designated currency. In the future, each Fund may invest a small percentage of its assets in designated currency denominated futures contracts, options, short-term currency swaps, overnight index swaps, short-term forward rate agreements, and shares of money market mutual funds or other investment companies that invest primarily in short-term fixed income securities. Each Fund will make monthly distributions of net income.

Each Fund will conduct its activities primarily in its designated currency. Revenue and expenses, with the exception of management fees and administrative expenses, will be in the designated currency. Each Fund will maintain books and records in its designated currency and will not enter into transactions in U.S. dollars except for paying management fees and certain administrative expenses. Transactions between a Fund and its shareholders, including purchases and redemptions of shares, will ordinarily occur in each Fund's designated currency. It is represented that each Fund will hold only a relatively small portion of its assets in U.S. dollars or other liquid U.S. dollar denominated instruments to meet its monthly distribution obligations and that any U.S. dollar contributions to a Fund will be nominal. None of the Funds will have employees.

LAW and ANALYSIS:

Section 985(a) of the Internal Revenue Code generally provides that all determinations for Federal income tax purposes shall be made in a taxpayer's functional currency. Sec. 985(a). Except as otherwise provided by ruling or administrative pronouncement, the U.S. dollar is the functional currency of a qualified business unit (QBU) that has the United States as its residence as defined in section 988(a)(3)(B). Treas. Reg. §1.985-1(b)(1)(iii). Treas. Reg. §1.989(a)-1(b)(2)(i) provides that a corporation is a QBU. Under section 988(a)(3)(B)(i)(II), the United States is the residence of a corporation which is a United States person as defined in section 7701(a)(30). The term "United States person" includes a domestic corporation, a corporation created or organized in the United States or under the laws of the United

States. Sec 7701(a)(30) and (a)(4). Each Fund intends to qualify as a regulated investment company and will be a domestic corporation if all the requirements of section 851 and its accompanying regulations are met. As domestic corporations, under section 985 and the applicable regulations thereunder, the functional currency of each Fund would be the U.S. dollar absent a ruling to the contrary.

Taxpayer represents that use of the U.S. dollar as a Fund's functional currency would jeopardize the ability of each Fund to maintain a stable net asset value in its designated currency. Each Fund would be required to recognize section 988 gain or loss on all of its section 988 transactions because these transactions would be denominated in the Fund's designated currency, which would be a nonfunctional currency to the Fund. Additionally, any QBUs of each Fund with a functional currency other than the U.S. dollar would be subject to 987.

The General Explanation of the Tax Reform Act of 1986 states that "[i]n appropriate circumstances, a domestic QBU (such as a regulated investment company organized to invest in securities denominated in a specific currency) may have a foreign currency as the functional currency." Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 1093-94 (Comm. Print 1987).

Treas. Reg. § 1.985-1(c)(1) provides that if a QBU is not required to use the dollar as its functional currency, its functional currency shall be the currency of the economic environment in which a significant part of the QBU's activities are conducted, if the QBU keeps, or is presumed to keep, its books and records in such currency. Treas. Reg. § 1.985-1(c)(2) provides that the economic environment in which a significant part of the QBU's activities are conducted shall be determined by taking into account all the facts and circumstances. Treas. Reg. § 1.985-1(c)(2)(i) sets forth some facts and circumstances which are considered when determining the economic environment in which a significant part of the QBU's activities are conducted.

If the ruling requested herein is issued, each Fund would be permitted to determine its functional currency by applying the principles of Treas. Reg. § 1.985-1(c). Under these principles, each Fund would be eligible to adopt its designated currency as its functional currency if the facts and circumstances warrant such a determination. This conclusion is consistent with the language in the General Explanation of the Tax Reform Act of 1986 as set forth above.

Based solely on the facts and representations submitted and provided that each Fund qualifies as a regulated investment company under section 851(a) of the Code and that each Fund is treated as a separate corporation under section 851(g), Taxpayer may apply the principles of § 1.985-1(c)(2)(i) to determine the functional currency of each Fund. Should a Fund properly adopt its designated currency as its functional currency, it will compute its taxable income or loss in its designated currency and

translate its taxable income into U.S. dollars using the weighted average exchange rate for the year.

No opinion is expressed as to what the functional currency of each Fund will be when the principles of §1.985-1(c)(2)(i) are applied.

No opinion is expressed as to whether the Funds qualify as regulated investment companies under section 851(a) of the Code and the accompanying regulations thereunder or whether each Fund may be treated as a separate corporation under section 851(g).

No opinion is expressed as to the character of any amounts received by shareholders as distributions on or redemptions of their shares in a Fund. No opinion is expressed on the character of income or loss realized on a sale by shareholders of their shares in a Fund.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax return of the taxpayers involved for the taxable year in which the determination covered by this letter is made.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the Taxpayer's representatives.

Sincerely,

Margaret Harris
Assistant Branch Chief, Branch 5
International

cc: